IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8501 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

KAUSHAL D JHAVERI

Versus

DY DIRECTOR OF INCOME TAX (INVESTIGATION)

Appearance:

MR JP SHAH for Petitioner

MR MIHIR JOSHI for MR MANISH R BHATT for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 10/11/2000

JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

The petitioner claims to be a proprietor of M/s. Sonali Enterprise. In the name of M/s. Sonali Enterprise, according to the petitioner, he is doing business of transporting goods. As stated in para 11 of the petition, the petitioner works like a middleman. He gets orders for transporting goods of certain persons and upon contacting the persons having trucks and other vehicles, he gets goods of the concerned persons transported through vehicles belonging to other persons and by doing so, he earns his profits by paying lesser amount to the truckowners than the amount charged from the persons whose goods are transported.

2. The petitioner has been constrained to approach this court because he has been aggrieved by an order passed by respondent No.1 under the provisions of sec. 132(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') whereby the principal officer of Digvijay Cement Co. Ltd. has been directed not to part with any amount lying with the said company belonging to M/s. Sonali Enterprise (proprietor of which is Shri Kaushal D. Zaveri i.e. the petitioner). It has been submitted in the petition that a sum of Rs. 97.77 lacs belonging to the petitioner is lying with Digvijay Cement Co. Ltd. and by virtue of the impugned order, the petitioner is unable to get the said amount from Digvijay Cement Co. Ltd.

3. Another pertinent fact is with regard to pendency of assessment proceedings of the petitioner for the assessment year 1998-99. Notice under sec. 143(3) of the Act has been served upon the petitioner so that income for the said year as stated in the return filed by the petitioner can be scrutinised in details. During pendency of the said assessment proceedings, an order under the provisions of sec. 281B of the Act dated 24.6.2000 has been passed by respondent No. 2 whereby Digvijay Cement Co. Ltd. has been restrained from making any payment of its debt or any part thereof to M/s. Sonali Enterprise of which the petitioner is the proprietor. A copy of the said order is annexed and marked Annexure D to the petition.

4. Learned Advocate Shri J.P. Shah appearing for the petitioner has submitted that the impugned order dated 24th June 2000, which has been passed under the

provisions of sec. 281B of the Act denotes that the respondent authorities believe that the petitioner and/or its proprietary concern named M/s. Sonali Enterprise is closely connected with a group of M/s. G.B. & Co. and as M/s. G.B. & Co. has tax liability exceeding Rs. 491 lacs and as M/s. Sonali Enterprise appears to be closely connected with M/s. G.B. & Co., the impugned orders had been passed by the respondent authorities.

5. It has been submitted by the learned advocate appearing for the petitioner that the petitioner is a small businessman doing business of transportation and he has no relation whatsoever with M/s. G.B. & Co. So as to substantiate his statement, he has drawn our attention to the contents of para 11 of the petition. The relevant portion of the said para reads as under :

> "In respect of the dues of M/s. G.B. & Co., the properties belonging to those assessees could be attached. The entire action of the Assessing Officer apart from being invalid in law, is absolutely arbitrary and high handed. The assessees of M/s. G.B. & Co. are all the members of a family whose surname is 'Kundalia'; the petitioner is not a 'Kundalia' and does not belong to that family, and is not a relative of theirs and is a businessman in his own right. The petitioner's entire business is with 3 to 4 customers who pay by cheque and who deduct the tax while crediting the account of the petitioner. The petitioner's returned income and assessed income has never exceeded 2 lacs of rupees, and therefore, the attachment of Rs. 97.77 lacs standing to the credit of the petitioner's account in Shri Digvijay Cement Co. Ltd. is absolutely without authority of law. The petitioner wishes that the Assessing Officer had kept in mind that he was attaching the moneys mostly belonging to small transport operators for no fault of theirs."

6. Thus, the learned advocate appearing for the petitioner has made an effort to show that, though the petitioner is not connected with M/s. G.B. & Co., the respondent authorities have acted in gross violation of the legal provisions by passing the impugned orders whereby the petitioner has been restrained from getting his money from Digvijay Cement Co. Ltd.

7. It has been further submitted by the learned

advocate that even if the respondent authorities had information that M/s. Sonali Enterprise is a benami of M/s G.B. & Co., the respondent authorities do not have any right to exercise powers under sec. 281B of the Act with regard to the assets of the petitioner. It has been submitted by him that it is open to the respondent authorities to take action so as to attach properties of M/s. G.B. & Co. but not assets of M/s. Sonali Enterprise especially when M/s Sonali Enterprise or its proprietor has no relation with M/s. G.B. & Co.

8. In pursuance of the notice issued to the respondent authorities, affidavits have been filed by the respondents. Affidavit of respondent No. 1 denotes that the premises of M/s. G.B. & Co. had been searched under the provisions of sec. 132 of the Act and in the course of the search, certain material was found whereby the respondent authorities came to know that M/s. Sonali Enterprise is a benami of M/s. G.B. & Co. Relevant details have been incorporated in the affidavit-in-reply filed by respondent No. 1.

9. At the time of hearing of the petition, learned advocate Shri Joshi appearing for the respondent authorities has drawn our attention to certain startling facts, stated on oath by respondent No. 1. In reply to the facts stated by the petitioner that the petitioner is not related to M/s. G.B. & Co., and the petitioner is a person who is operating as a transporter, it has been submitted by Shri Joshi that in the course of the search taken out under the provisions of sec. 132 of the Act at the premises of M/s. G.B. & Co., blank signed cheques of bank account of M/s. Sonali Enterprise were found. Moreover, on the basis of the statement made by a supervisor of M/s G.B. & co., it was found that counterfoils of cheques belonging to M/s. Sonali Enterprise contained handwriting of Shri Rajubhai Kundalia, one of the main members connected with M/s. G.B. & Co. Moreover, certain letters written by members of M/s. G.B. & Co. were found in the course of the search. From the said letters it was clear that M/s. G.B.& Co. was operating in the name of M/s. Sonali Enterprise and persons concerned with M/s. G.B. & Co. were also planning to change name of Sonali Enterprise and a letter was also written to that effect to Digvijay Cement Co. Ltd., with whom M/s. Sonali Enterprise was having business connections. Sufficient material has been found at the time of the search of the premises of M/s. G.B. & Co., details of which have been elaborately stated in the affidavit-in-reply of respondent No. 1.

10. Upon perusal of the affidavit-in-reply, prima facie, it appears that M/s. Sonali Enterprise might be a benami of M/s. G.B. & Co. It also appears that the petitioner was not stating complete details with regard to his income in the income tax return filed by him. Upon perusal of the reply given by the respondent, it is clear that the petitioner, as per his own admission, is an employee of Jamnagar Nagarik Sahkari Bank Ltd. getting approximately Rs. 4500 per month by way of salary. The said fact with regard to income from salary has not been stated by him while filing his return of income.

11. After hearing the concerned advocates and upon perusal of the materia placed before this court, it is very clear that the action taken by the respondent authorities under the provisions of sec. 132(3) of the Act and sec. 281B of the Act cannot be said to be improper or illegal at this stage.

12. The scrutiny assessment for the assessment year 1998-99 of M/s. Sonali Enterprise is pending at present. Upon perusal of the statement made in the petition, it is clear that the petitioner or M/s. Sonali Enterprise is not having any immovable property and the proprietor of M/s. Sonali Enterprise, i.e. the present petitioner, is an employee of a co-operative bank getting salary of Rs. 4500 per month. In the circumstances, if the petitioner is made liable to make more payment by way of tax, it will be extremely difficult, if not impossible, for the respondent authorities to recover the amount of tax from the petitioner or its proprietary concern - M/s. Sonali Enterprise.

13. Prima facie, there appears to be ample material to show that the petitioner and M/s. G.B. & Co. are related to each other. Letters were written to Digvijay Cement Co. Ltd. by persons connected with M/s. G.B. & Co. to the effect that the name of M/s. Sonali Enterprise had been changed and in future under a new name "M/s. Poonam Enterprise" business would be done with Digvijay Cement Co. Ltd. A copy of the letter written to Digvijay Cement Co. Ltd. was seized from the office of M/s. G.B. & Co. and the said letter has been reproduced in para VI of the affidavit-in-reply filed by respondent No. 1. The said fact denotes that possibly M/s. G.B. & Co. might be doing business with Digvijay Cement Co. Ltd. in the name of M/s. Sonali Enterprise. It is also pertinent to note that blank cheques duly signed on behalf of M/s. Sonali Enterprise were found during the search and seizure proceedings from the office

premises of M/s. G.B. Co. The above referred facts, prima facie, are sufficient to establish that the petitioner, who is the proprietor of M/s. Sonali Enterprise, is closely connected with M/s. G.B. & Co. and possibly M/s. G.B. & Co. is doing business in the name of M/s. Sonali Enterprise of which the petitioner is shown as a proprietor.

14. Another important fact is that the petitioner has not revealed all relevant facts in the petition. The petitioner ought to have revealed the fact that he is an employee of a co-operative bank and, in fact, he is having relations with M/s. G.B. & Co. The facts stated in the previous para clearly reveal that the petitioner is related to M/s. G.B. & Co., but, for the reasons best known to the petitioner, he did not say so but submitted before this court that he was not related to M/s. G.B. & Co. Looking to the facts stated hereinabove, at this stage it cannot be ruled out that M/s. Sonali Enterprise is a benami of M/s. G.B. & Co.

15. Looking to the circumstances, in our opinion, it cannot be said that the impugned orders passed by the respondent authorities are illegal or improper. There is no illegality committed by the respondent authorities while passing the impugned orders. It has been stated on behalf of the respondent authorities that previous approval of the authority concerned had been duly obtained before passing the impugned order dated 24.6.2000 under the provisions of sec. 281B of the Act.

16. Looking to the facts of the case and in view of the fact that the impugned orders are not violative of any legal provision, we do not desire to exercise our discretionary powers in a writ jurisdiction at an interlocutory stage. It is also pertinent to note that the impugned orders are purely provisional orders with limited life and, therefore, we would not like to interfere with the said orders. Moreover, if M/s. G.B. & Co. is operating in the name and style of M/s. Sonali Enterprise, it cannot be said that the respondent authorities cannot pass any order against M/s. Sonali Enterprise.

17. It is made clear that in rejecting this petition we have not expressed any final conclusion on disputed facts and any conclusions drawn by us for the limited purpose of deciding this petition should not be taken by the parties as our decision on the merits or otherwise.

18. In the facts and circumstances of the case, the

petition is rejected with no order as to costs. Notice is discharged.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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